

AMENDED IN SENATE JUNE 12, 1997

AMENDED IN SENATE JUNE 9, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 669

Introduced by Assembly Member Wright

February 26, 1997

An act to amend Sections 1695.4, 1695.5, ~~1695.7~~ 1695.6, 2945.3, and 2945.6 of the Civil Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 669, as amended, R. Wright. Real property: foreclosure.

(1) Existing law provides for the regulation of a contract between an equity purchaser, who is defined as a specified person who acquires title to a defined residence in foreclosure, and an equity seller, who is defined as the seller of a residence in foreclosure, that is incident to the sale of a residence in foreclosure. Existing law provides that the equity seller has, in addition to a right of rescission, the right to cancel any contract with an equity purchaser until midnight of the 5th business day following the day on which the equity seller signs any contract or until 8 a.m. on the day scheduled for the sale of the property pursuant to a deed of trust, whichever occurs first.

This bill would provide that the right to cancel extends until midnight of the 5th business day following the day on which the equity seller signs a contract subject to the

above-described regulatory provisions or until 8 a.m. on the day scheduled for the sale of the property, as specified.

(2) Existing law requires the equity purchaser to provide the equity seller with a copy of the contract and notice of cancellation specifying the date and time by which the equity seller may cancel the sale without any penalty or obligation.

This bill would allow the equity seller to cancel the contract until the equity purchaser has complied with this requirement.

~~(3) Existing law authorizes an equity seller to bring an action for damages or other relief against an equity purchaser for the violation of specified provisions of the regulations described in (1). Existing law requires an award of exemplary damages in an amount not less than 3 times actual damages for specified violations.~~

~~This bill would except one of the provisions specified in existing law from this requirement.~~

(3) Existing law states that when an equity purchaser purports to hold title as a result of an absolute conveyance by an equity seller who either reserved the right to repurchase, or was given the option of repurchasing the residence, the equity purchaser shall not cause any encumbrances to be placed on the property without the written consent of the equity seller.

This bill would provide that nothing in the above-described provision precludes the application of existing law prohibiting an equity purchaser from transferring or encumbering an interest in the residence in foreclosure to a 3rd party, as specified.

(4) Existing law provides for the regulation of defined foreclosure consultants. Existing law requires a court to award exemplary damages of at least three times the compensation received by the foreclosure consultant for the violation of specified provisions.

This bill would revise this provision to also require an award of exemplary damages of 3 times the homeowner's actual damages for any violation of other specified provisions.

(5) Existing law requires a foreclosure consultant to provide the owner with a copy of the contract and attached notice of cancellation.

This bill would allow the owner to cancel the contract until the foreclosure consultant has complied with this requirement.

(6) *This bill also would add a provision regarding legislative intent, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1695.4 of the Civil Code is
2 amended to read:

3 1695.4. (a) In addition to any other right of rescission,
4 the equity seller has the right to cancel any contract with
5 an equity purchaser until midnight of the fifth business
6 day following the day on which the equity seller signs a
7 contract that ~~is subject to~~ *complies with* this chapter or
8 until 8 a.m. on the day scheduled for the sale of the
9 property pursuant to a power of sale conferred in a deed
10 of trust, whichever occurs first.

11 (b) Cancellation occurs when the equity seller
12 personally delivers written notice of cancellation to the
13 address specified in the contract or sends a telegram
14 indicating cancellation to that address.

15 (c) A notice of cancellation given by the equity seller
16 need not take the particular form as provided with the
17 contract and, however expressed, is effective if it
18 indicates the intention of the equity seller not to be bound
19 by the contract.

20 SEC. 2. Section 1695.5 of the Civil Code is amended
21 to read:

22 1695.5. (a) The contract shall contain in immediate
23 proximity to the space reserved for the equity seller's
24 signature a conspicuous statement in a size equal to at
25 least 12-point bold type, if the contract is printed or in
26 capital letters if the contract is typed, as follows:
27

1 “You may cancel this contract for the sale of your house with-
2 out any penalty or obligation at any time before

3 _____.
4 (Date and time of day)

5 See the attached notice of cancellation form for an explanation of
6 this right.”

7 The equity purchaser shall accurately enter the date and time of
8 day on which the rescission right ends.

9 (b) The contract shall be accompanied by a completed form in
10 duplicate, captioned “notice of cancellation” in a size equal to
11 12-point bold type, if the contract is printed or in capital letters if
12 the contract is typed, followed by a space in which the equity
13 purchaser shall enter the date on which the equity seller executes
14 any contract. This form shall be attached to the contract, shall be
15 easily detachable, and shall contain in type of at least 10-point, if
16 the contract is printed or in capital letters if the contract is typed,
17 the following statement written in the same language as used in the
18 contract:

19
20 “NOTICE OF CANCELLATION

21 _____
22 (Enter date contract signed)

23
24 You may cancel this contract for the sale of your house, without
25 any penalty or obligation, at any time before

26 _____.
27 (Enter date and time of day)

28 To cancel this transaction, personally deliver a signed and dated
29 copy of this cancellation notice, or send a telegram
30 to _____,

31 (Name of purchaser)

32 at _____
33 (Street address of purchaser’s place of business)

34 NOT LATER THAN _____.

35 (Enter date and time of day)

36 I hereby cancel this transaction _____.

37 (Date)

38 _____”

39 (Seller’s signature)

40

(c) The equity purchaser shall provide the equity seller with a copy of the contract and the attached notice of cancellation.

(d) Until the equity purchaser has complied with this section, the equity seller may cancel the contract.

~~SEC. 3. Section 1695.7 of the Civil Code is amended to read:~~

~~1695.7. An equity seller may bring an action for the recovery of damages or other equitable relief against an equity purchaser for a violation of any subdivision of Section 1695.6 or Section 1695.13. The equity seller shall recover actual damages plus reasonable attorneys' fees and costs. In addition, the court shall award exemplary damages or equitable relief, or both, if the court deems such award proper, but in any event shall award exemplary damages in an amount not less than three times the equity seller's actual damages for any violation of Section 1695.6, except for subdivision (e) or Section 1695.13. Any action brought pursuant to this section shall be commenced within four years after the date of the alleged violation.~~

SEC. 3. Section 1695.6 of the Civil Code is amended to read:

1695.6. (a) The contract as required by Sections 1695.2, 1695.3, and 1695.5, shall be provided and completed in conformity with those sections by the equity purchaser.

(b) Until the time within which the equity seller may cancel the transaction has fully elapsed, the equity purchaser shall not do any of the following:

(1) Accept from any equity seller an execution of, or induce any equity seller to execute, any instrument of conveyance of any interest in the residence in foreclosure.

(2) Record with the county recorder any document, including, but not limited to, any instrument of conveyance, signed by the equity seller.

(3) Transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any third party, provided no grant of any interest or

1 encumbrance shall be defeated or affected as against a
2 bona fide purchaser or encumbrancer for value and
3 without notice of a violation of this chapter, and
4 knowledge on the part of any such person or entity that
5 the property was “residential real property in
6 foreclosure” shall not constitute notice of a violation of
7 this chapter. This section shall not be deemed to abrogate
8 any duty of inquiry which exists as to rights or interests of
9 persons in possession of the residential real property in
10 foreclosure.

11 (4) Pay the equity seller any consideration.

12 (c) Within 10 days following receipt of a notice of
13 cancellation given in accordance with Sections 1695.4 and
14 1695.5, the equity purchaser shall return without
15 condition any original contract and any other documents
16 signed by the equity seller.

17 (d) An equity purchaser shall make no untrue or
18 misleading statements regarding the value of the
19 residence in foreclosure, the amount of proceeds the
20 equity seller will receive after a foreclosure sale, any
21 contract term, the equity seller’s rights or obligations
22 incident to or arising out of the sale transaction, the
23 nature of any document which the equity purchaser
24 induces the equity seller to sign, or any other untrue or
25 misleading statement concerning the sale of the
26 residence in foreclosure to the equity purchaser.

27 (e) Whenever any equity purchaser purports to hold
28 title as a result of any transaction in which the equity
29 seller grants the residence in foreclosure by any
30 instrument which purports to be an absolute conveyance
31 and reserves or is given by the equity purchaser an option
32 to repurchase such residence, the equity purchaser shall
33 not cause any encumbrance or encumbrances to be
34 placed on such property or grant any interest in such
35 property to any other person without the written consent
36 of the equity seller. *Nothing in this subdivision shall*
37 *preclude the application of paragraph (3) of subdivision*
38 *(b).*

39 SEC. 4. Section 2945.3 of the Civil Code is amended
40 to read:

1 2945.3. (a) Every contract shall be in writing and
2 shall fully disclose the exact nature of the foreclosure
3 consultant's services and the total amount and terms of
4 compensation.

5 (b) The following notice, printed in at least 14-point
6 boldface type and completed with the name of the
7 foreclosure consultant, shall be printed immediately
8 above the statement required by subdivision (c):
9

10 "NOTICE REQUIRED BY CALIFORNIA LAW
11

12 _____ or anyone working
13 (Name)

14 for him or her CANNOT:

15 (1) Take any money from you or ask you for money
16 until _____ has
17 (Name)

18 completely finished doing everything he or she said he or she
19 would do; and

20 (2) Ask you to sign or have you sign any lien, deed of trust, or
21 deed."
22

23 (c) The contract shall be written in the same language
24 as principally used by the foreclosure consultant to
25 describe his services or to negotiate the contract; shall be
26 dated and signed by the owner; and shall contain in
27 immediate proximity to the space reserved for the
28 owner's signature a conspicuous statement in a size equal
29 to at least 10-point bold type, as follows: "You, the owner,
30 may cancel this transaction at any time prior to midnight
31 of the third business day after the date of this transaction.
32 See the attached notice of cancellation form for an
33 explanation of this right."

34 (d) The contract shall contain on the first page, in a
35 type size no smaller than that generally used in the body
36 of the document, each of the following:

37 (1) The name and address of the foreclosure
38 consultant to which the notice or cancellation is to be
39 mailed.

40 (2) The date the owner signed the contract.

(e) The contract shall be accompanied by a completed form in duplicate, captioned “notice of cancellation”, which shall be attached to the contract, shall be easily detachable, and shall contain in type of at least 10-point the following statement written in the same language as used in the contract:

“NOTICE OF CANCELLATION

(Enter date of transaction) (Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____
(Name of foreclosure consultant)

at _____
(Address of foreclosure consultant’s place of business)

NOT LATER THAN MIDNIGHT OF _____ .
(Date)

I hereby cancel this transaction _____ .
(Date)

(Owner’s signature)

(f) The foreclosure consultant shall provide the owner with a copy of the contract and the attached notice of cancellation.

(g) Until the foreclosure consultant has complied with this section, the owner may cancel the contract.

SEC. 5. Section 2945.6 of the Civil Code is amended to read:

2945.6. (a) An owner may bring an action against a foreclosure consultant for any violation of this chapter. Judgment shall be entered for actual damages, reasonable attorneys’ fees and costs, and appropriate equitable relief. The court also may, in its discretion, award exemplary

1 damages and shall award exemplary damages equivalent
2 to at least three times the compensation received by the
3 foreclosure consultant in violation of subdivision (a), (b),
4 or (d) of Section 2945.4, and three times the owner's
5 actual damages for any violation of subdivision (c), (e),
6 or (g) of Section 2945.4, in addition to any other award of
7 actual or exemplary damages.

8 (b) The rights and remedies provided in subdivision
9 (a) are cumulative to, and not a limitation of, any other
10 rights and remedies provided by law. Any action brought
11 pursuant to this section shall be commenced within four
12 years from the date of the alleged violation.

13 *SEC. 6. It is the intent of the Legislature in enacting*
14 *this bill to abrogate the holding in Boquilon v. Beckwith*
15 *(1996) 49 Cal. App. 4th 1697, 1713-1716, as it related to the*
16 *relationship between paragraph (3) of subdivision (b) of*
17 *Section 1695.6 of the Civil Code and subdivision (e) of*
18 *that section.*

